SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/03/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000133

FILED: _____

STATE OF ARIZONA

WEBSTER CRAIG JONES

v.

ALBERT SOLTERO

NEAL W BASSETT

MESA CITY COURT
REMAND DESK CR-CCC

MINUTE ENTRY

MESA CITY COURT

Cit. No. 760418

Charge: 3. EXTREME DUI

DOB: 03/12/72

DOC: 05/11/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since its assignment on June 5, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of

Practice. This Court has considered and reviewed the record of the proceedings from the Mesa City Court, and the excellent Memoranda submitted by both counsel.

1. Facts

Appellant, Albert Soltero, was arrested on May 11, 2001 within the City of Mesa and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving with a Blood Alcohol Content of .10 or Higher, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); and Extreme DUI, a class 1 misdemeanor in violation of A.R.S. Section 28-1382(A).

The Arizona Legislature passed an amendment to A.R.S. Section 28-1382(A) amending that statute by lowering the limit for Extreme DUI from .18 down to .15, and increasing the criminal penalties for the crime. This amendment contained a Section 3 which provided that it would be effective upon the Governor's signature. The Governor signed the law on April 4, 2001. Had the Governor not signed the bill on April 4, 2001, or if the bill had not contained an emergency clause, the amendments to A.R.S. Section 28-1382(A) would have been effective August 9, 2001.

2. Statement of the Case

Appellant filed a Motion to Dismiss the Extreme DUI charge challenging that the emergency clause enactment of the amendments to A.R.S. Section 28-1382(A) were unconstitutional. The trial judge denied this motion. Thereafter, both parties submitted the case to the court on the basis of a stipulated record and Appellant was found guilty of Extreme DUI. Appellant has filed a timely Notice of Appeal in this case.

3. Standard of Review

Appellant raises a number of issues of constitutional dimension and statutory construction. In matters of statutory interpretation the standard of review is *de novo*.[1] The appellate court must not reweigh the evidence.[2] Instead, evidence must be reviewed in a light most favorable to affirming the trial court's ruling.[3] Appellate courts must review the constitutionality of a statute de novo.[4]

4. Vagueness of Statute

There is a strong presumption in Arizona that questioned statutes are presumed to be constitutional, and the party asserting its unconstitutionality has a burden of clearly demonstrating the unconstitutionality.[5] Whenever possible, a reviewing court should construe a statute so as to avoid rendering it unconstitutional and resolve any doubts in favor of constitutionality.[6] A statute is unconstitutionally vague if it fails to give persons of average intelligence reasonable notice of what behavior is prohibited, or if it is drafted in such a manner that permits arbitrary and discriminatory enforcement.[7] A statute may be impermissibly vague because it fails to establish standards for the police and public that are sufficient to guard

[1] In re: Kyle M. 200 Ariz. 447, 27 P.3d 804 (App. 2001). See also State v. Jensen, 193 Ariz. 105, 970 P.2d 937 (App. 1998).
[2] Id.
[3] Id.; State v. Fulminatante, 193 Ariz. 485, 975 P.2d 75 (1999).
[4] McGovern v. McGovern, 201 Ariz. 172, 33 P.3d 506 (App. 2001); Ramirez v. Health Partners of Southern Arizona, 193 Ariz. 325, 972 P.2d 658 (App. 1998).
[5] State v. Lefevre, 193 Ariz. 385, 389, 972 P.2d 1021, 1025 (App. 1998); Larsen v. Nissan Motor Corporation in the United States, 194 Ariz. 142, 978 P.2d 119 (App. 1998).
[6] Id.
[7] State v. Lefevre; supra; State v. Steiger, 162 Ariz. 138, 781 P.2d 616 (App. 1989).

against the arbitrary deprivation of liberty interests.[8] Due process does not require that a statute be drafted with absolute precision.[9] Whenever the language of a legislative enactment is unclear, the court's must strive to give it a sensible construction and, if possible, uphold the constitutionality of that provision.[10]

The emergency effective date of the amendments to A.R.S. Section 28-1382(A) clearly inform the members of the public of the effective date of this legislation. Persons of average intelligence would understand the effective date of this legislation and, contrary to Appellant's assertions, the language of the statute is not unclear.

The Arizona Constitution specifically permits and empowers our Legislature to enact statutes with emergency clauses in Article IV, Part 1, Section 1(3).

Appellant, as one who challenges the constitutionality of a legislative enactment, bears the burden of proving its unconstitutionality. Appellant is not able to prove that the acceleration of the effective date of the amendments to A.R.S. Section 28-1382 deprived him of due process. The problem with Appellant's arguments are that in no way can Appellant show that the normal methods by which the members of the public become aware of statutory enactments (or the presumption of such knowledge) would not have applied to the emergency enactment which became effective April 4, 2001 regarding the changes to A.R.S. Section 28-1382. Therefore, Appellant's arguments must fail.

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[8] Recreational Developments of Phoenix, Incorporated v. City of Phoenix, 83 F.Supp.2d 1072, 1087 (D. Ariz. 1999), citing City of Chicago v. Morales, 527 U.S. 41, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999).
[9] State v. Lefevre, supra; State v. Takacs, 169 Ariz. 392, 819 P.2d 978 (App. 1991), citing Fuenning v. Superior Court, 139 Ariz. 590, 680 P.2d 121 (1983).
[10] State v. Fuenning, supra; Maricopa County Juvenile Action No. JT9065297, 181 Ariz. 69, 887 P.2d 599 (App. 1994), citing State v. Wagstaff, 164 Ariz. 485, 794 P.2d 118 (1990).

5. Conclusion

For all of the reasons explained in this court's opinion, this Court finds A.R.S. Section 28-1382, as amended April 4, 2001, to be constitutionally sound and not void for vagueness as applied by the Mesa City Court to Appellant.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed in this case.

IT IS FURTHER ORDERED remanding this case back to the Mesa City Court for all further and future proceedings in this case.